

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality regulations, LAC 33:III.Chapter 6 (Log #AQ211).

This proposed rule revises LAC 33:III.Chapter 6, adopted in August 1994 and amended in December 1998 and September 1999. This revision involves four actions. First, language requiring that emission reduction credits (ERC) must be "surplus when used" will be added. This revision is required in order to comply with EPA's interpretation of the Clean Air Act and current policy/guidance regarding Nonattainment New Source Review (NNSR) procedures. Second, all references to the ERC bank being a contingency measure for Louisiana's 15% VOC Reasonable Further Progress (RFP) Plan will be removed. Next, stipulations that mandate emissions reductions be banked as ERCs in order to use them to "net out" in a nonattainment area will be eliminated. Finally, the mobile emission reduction credits (MERCs) provisions under LAC 33:III.611 will be deleted, since this program was never implemented. The basis and rationale for this proposed rule are to comply with federal guidelines so that the regulations do not lead to DEQ actions that do not conform with EPA's "surplus when used" policy.

Any permits previously issued in accordance with state and EPA-approved rules in effect at the time of issuance remain valid. Thus, the department has no intention to reopen any permits for cause due to changes in applied policies.

This proposed rule meets an exception listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on August 28, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by AQ211. Such comments must be received no later than September 4, 2001, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to FAX (225) 765-0389. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ211.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100

Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

Title 33
ENVIROMENTAL QUALITY
PART III. Air

Chapter 6. Regulations on Control of Emissions Through the Use of Emission Reduction Credits Banking

§601. Background and Purpose

A.——Background

1.——*Federal Register*, Vol. 51, Number 233, Thursday, December 4, 1986, contained EPA's Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits. This Policy Statement replaced the original bubble policy (44 FR 71779, December 11, 1979) and describes emissions trading and sets out general principles EPA will use to evaluate emissions trades under the Clean Air Act and applicable federal regulations. Emissions trading includes bubbles, netting, and offsets as well as banking (storage) of emission reduction credits (ERC) for future use. These alternatives do not alter overall air quality requirements; they give states and industry more flexibility to meet those requirements. EPA endorses emissions trading and encourages its sound use by states and industry to help meet the goals of the Clean Air Act more quickly and inexpensively. This regulation does not alter new source review requirements nor exempt owners or operators of stationary sources from compliance with applicable preconstruction permit regulations in accord with 40 CFR 51.18, 51.24, 51.307, 52.21, 52.24, 52.27, and 52.28. Interested parties should, however, be aware that bubble trades are not subject to preconstruction review or regulations where these trades do not involve construction, reconstruction, or modification of source within the meaning of those terms in the regulations listed above.

2.——*Federal Register*, Vol. 58, Number 34, Tuesday, February 23, 1993, sets forth proposed Economic Incentive Program (EIP) Rules. Pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the 1990 Clean Air Act Amendments (CAAA), the use of EIPs is mandated for ozone nonattainment areas classified as severe or extreme. It is optional in ozone nonattainment areas classified as marginal, moderate, or serious. EIPs, or ERCs also serve to demonstrate that the state can meet certain emission reduction milestones required in the 15 percent VOC Reduction Reasonable Further Progress (RFP) Plan for Ozone Nonattainment Areas.

3.——An Emission Reductions Credits Program has been identified as a contingency measure for Louisiana's 15 percent VOC Reduction RFP Plan. As such, sources are prohibited from withdrawing any ERCs below the amount claimed by the LDEQ in its 3 percent contingency measure.

B.——Purpose

A. 1. This rule establishes the means of enabling sources to identify and preserve or acquire emission reductions for New Source Review (NSR) offsets ~~as well as for use in netting purposes~~. The pollutants to which this rule applies are nitrogen oxides (NO_x) and volatile organic compounds (VOC). ~~Interpollutant trading, for example, using a NO_x credit to offset a VOC emission, is not allowed.~~

2. ~~Act 570 of the 1993 Regular Legislative Session mandates the enactment of rules, by September 1, 1994, that provide for a vehicle scrappage program within the serious nonattainment area in exchange for emission reduction credits, banking, and trading criteria established by rule.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

§603. Applicability

A. ~~The following sSources in EPA-designated ozone nonattainment areas must participate in the emissions banking program in order to utilize emission reductions for netting or as offsets:~~ sources located in EPA-designated ozone nonattainment areas, and sources located in EPA-designated ozone attainment areas potentially subject to offset requirements under LAC 33:III.Chapter 5. ~~Other sSources located in EPA-designated ozone attainment areas may not participate in the emissions banking program. If a source in an attainment area participates in the emissions banking program, the source must submit the annual submission required by LAC 33:III.613.D.~~ The following sources Any stationary point source at an affected facility in ozone nonattainment parishes are is eligible to participate in the emissions banking program: any stationary point source, any area source, and any registered mobile source. The following sources in ozone attainment parishes are eligible to participate in the emissions banking program: any stationary point source and any area source. ~~The rule shall apply to the following pollutants: NO_x and VOC.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 27:

§605. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 ~~of these regulations except as defined within the separate subchapters or~~ with the exception of those terms specifically defined as follows:

Actual Emissions—the actual rate of emissions of an air ~~contaminant~~ pollutant from a source operation, equipment, or control apparatus. Actual emissions shall be calculated using the actual operating hours, production rates, and types of materials used, processed, stored, or combusted during the ~~selected time~~ baseline period. ~~In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal major stationary source operation. A different time period shall be allowed upon a determination by the department that it is more representative of normal major stationary source operation.~~ Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. Acceptable methods for estimating the actual emissions may include, but are not limited to, any one or a combination of the following:

- a. emission factors based on EPA's Compilation of Air Pollutant Emission Factors (AP-42) or other emission factors approved by the department, if better source specific data is not available;
- b. fuel usage records, production records, purchase records, material balances, engineering calculations (approved by the department), source tests (~~only if suitable emission factors are not available~~), waste disposal records, emission reports ~~previously submitted to the department~~ such as emission inventory reports, SARA Title III, or MACT compliance certifications, and other methods specifically approved by the ~~administrative authority~~ department.

Adjusted Total Point-Source Emissions Inventory—the aggregate emissions inventory from each of the modeled parishes, which includes 1997 actual emissions from point sources; allowable emissions from proposed power generating plants; banked ERC and pending ERC applications where the emission reduction occurred between January 1, 1990, and December 31, 1997; and adjustments for growth.

Air Contaminant—~~any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors, or gases.~~

Allowable Emissions/Potential to Emit—the emissions rate of a stationary source calculated using the rate at which an air contaminant may be emitted into the outdoor atmosphere. This rate shall be based on the maximum rated capacity of the source equipment and 8760 hours per year of operation, (unless the equipment source is subject to federally enforceable limits which that restrict the operating rate, hours of operations, or both).~~In such cases this rate is based on~~ and the most stringent of the following:

- a. ~~applicable national standards of performance for new stationary sources (NSPS) as set forth in 40 CFR Part 60;~~

b. ~~applicable national emission standards for hazardous air pollutants (NESHAP) as set forth in 40 CFR Part 61;~~

e. ~~applicable emission, equipment, and operating standards as set forth in this Chapter, including those with a future compliance date;~~

d. ~~applicable emission limitations specified in a federally enforceable permit, including limitations (best available control technology [BACT] and lowest achievable emission rate [LAER] requirements) with a future compliance date;~~

e. ~~any emission limitation in an applicable state implementation plan (SIP); and~~

a. an applicable standard set forth in 40 CFR part 60, 61, or 63;

b. any applicable state implementation plan (SIP) emissions limitation, including those with a future compliance date;

c. applicable emission limitations specified as a federally enforceable permit condition, including best available control technology (BACT) and lowest achievable emission rate (LAER) requirements, including those with a future compliance date; or

fd. applicable acid rain SO₂ and NO_x control requirements as defined under Title IV of the 1990 Clean Air Act Amendments and subsequent regulations.

~~Alter—to effect an alteration of equipment or control apparatus.~~

~~Alternative Fuel—with respect to any source operation, any fuel whose use is not authorized by any permit or, for a source operation without a permit, any fuel not used in the source operation since December 31, 1976.~~

~~Area Source—any small residential, governmental, institutional, commercial, or industrial fuel combustion operation; on-site solid waste disposal facilities; aircraft vessels, or other transportation facilities, or other miscellaneous sources identified through inventory techniques similar to those described in the Aerometric Emissions Reporting System (AEROS) Manual (see 40 CFR 51.100).~~

~~Bank—the repository for ERCs and includes the ERC banking register/database.~~

~~Bank Balance Sheet—the form that is completed and submitted along with supporting information to the department to request recognition and certification of potentially bankable emission reductions. A banking application is submitted by the owner(s) of the source creating bankable emission reductions or the owner's designated representative.~~

Bankable Emission Reductions—emission reductions of pollutants and their precursors for which ambient air quality standards exist and ~~which that~~ meet the provisions of ~~this rule~~ these regulations. Such reductions may be deposited in the ERC bank. Once banked and certified, the emission reductions become ERCs.

* * *

[See Prior Text]

Banking Register/Database—the document/database that records all ERC deposits, withdrawals, transfers, and transactions.

Baseline Emissions—~~that the~~ level of emissions during the baseline period as calculated in accordance with LAC 33:III.607.D.2, that occur prior to an emission reduction, considering all limitations required by applicable federally enforceable regulations, below which any additional reductions may be counted (credited) for use in trades.

Baseline Emission Level—~~the quantity of emissions during the defined baseline period that is used in calculating ERCs.~~

Baseline Period—the period of time over which the historical emissions of a source are averaged. In general, [This period shall be a time period of at least two consecutive years within the five years immediately preceding the date the emission reduction occurred that is determined by the department to be representative of normal source operation. The baseline period may be determined on either a calendar year or consecutive 12-month or consecutive 365-day basis. two consecutive calendar year period within the five years immediately preceding the date the emission reduction occurred. A different time period within the stated time frame of not less than one calendar year may be allowed if the department determines it is more representative of normal stationary source operation. The calendar year(s) selected must follow or include the emissions inventory reporting year used in the most recent SIP attainment demonstration model.]

Bubble—~~an alternative emission control plan where two or more existing emission points are regarded as being placed under a hypothetical dome, which is then regarded as a single emission point. Stationary sources under a bubble may reallocate emission decreases and increases, so long as the net effect results in the same or better ambient air quality and the same or less air emissions. Bubbles need not be confined to a single stationary source. Bubbles must meet all the requirements contained in the Federal Emissions Trading Policy Statement (51 FR 43814, December 4, 1986) or other applicable regulations.~~

Criteria Pollutant—~~ozone (O₃), PM-10, sulfur oxides measured as sulfur dioxide (SO₂), nitrogen oxides (NO_x), volatile organic compounds (VOC) measured as nonmethane hydrocarbons, carbon monoxide (CO), or lead (Pb), or any other air contaminant for which national ambient air quality standards have been adopted.~~

Emission Offset—a legally enforceable reduction, approved by the department, in the rate of actual emissions from an existing facility, which ~~reduction~~ is used to offset the increase in ~~allowable~~ emissions of

~~air contaminants~~ pollutants from a new or ~~altered~~ modified facility in accordance with the requirements of LAC 33:III.504.

* * *

[See Prior Text]

Emission Reduction Credit (ERC)—an emission reduction ~~certified~~ approved by the ~~administrative authority department~~ in accordance with the requirements of ~~the current regulations~~ this Chapter that represents a voluntary decrease, or a decrease in excess of that required by an applicable regulation, order, etc., in the quantity of a pollutant discharged from a source. To be valid, emission reduction credits must be surplus, enforceable, permanent, and quantifiable.

Emission Reduction Credit Certificate (ERC Certificate)—a document ~~certifying title~~ indicating ownership to a defined quantity and type of ERCs and issued by the department to the owner(s) identified on the certificate.

~~*Emissions Averaging*—defined in section 112(d) of the 1990 CAAA; involves the reduction of hazardous air pollutants within a facility by at least as much as would otherwise occur if the source were controlled point by point.~~

~~*Enforceable*—each transaction that revises any emission limit must be approved by the state and be federally enforceable. Means of making emission limits federally enforceable include SIP revisions, EPA-approved generic emissions trading regulations, and permits issued by states under EPA-approved SIP regulations, as well as permits issued by EPA or by states under delegation. ERCs due to trading activities should be incorporated in an enforceable compliance instrument which requires recordkeeping based on the averaging period of the emission limit, so that compliance may easily be determined for any single averaging period.~~

~~*Equipment*—any device capable of causing the emission of an air contaminant into the open air and any stack, chimney, conduit, flue, duct, vent or similar device connected or attached to or serving the equipment.~~

~~*Facility*—the combination of all structures, buildings, equipment, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person~~

~~*Federally Enforceable*—as applied to emission reductions, all limitations and conditions which that~~ are enforceable by the U.S. EPA administrator or the department, including the following:

- a. requirements contained in 40 CFR parts 60, ~~and~~ 61, and 63 (New Source Performance Standards, ~~and~~ National Emission Standards for Hazardous Air Pollutants, and National Emission Standards for Hazardous Air Pollutants for Source Categories);
- b. requirements within any applicable SIP;

- c. any requirements contained in permits issued ~~pursuant to~~ in accordance with 40 CFR 52.21 (Prevention of Significant Deterioration) or comparable state regulation (LAC 33:III.509);
- d. any requirements contained in permits issued ~~pursuant to~~ in accordance with 40 CFR 52.24 (Nonattainment New Source Review) or comparable state regulation (LAC 33:III.504);
- e. requirements contained in operating permits issued ~~pursuant to~~ in accordance with Louisiana permitting programs approved by EPA as meeting the requirements of Title V of the 1990 Clean Air Act Amendments; and
- f. requirements contained in a Louisiana regulation, a Louisiana operating permit, or a Louisiana-issued enforcement instrument ~~which~~ that is submitted to EPA and approved as a source-specific SIP revision. ~~ERCs must be federally enforceable before they are allowed as banked emissions credits.~~

~~*Fugitive Emissions*—any emissions of an air contaminant into the open air which do not pass through any stack or chimney.~~

~~*Hazardous Air Pollutant Offset*—the use of an ERC, which is equal or greater in quantity, and which is considered to be more hazardous, to compensate for emission increases of a hazardous air pollutant from a source to avoid being considered a modification according to the requirements of section 112(g) of the 1990 CAAA.~~

~~*Minimum Offset Ratio*—the minimum acceptable ratio of emission offsets from an existing facility to increases in allowable emissions from a new or altered facility.~~

~~*Mobile Emission Reduction Credits (MERCs)*—real, quantified emission reductions generated by a mobile source, approved by the department.~~

~~*Modeled Emissions*—for a given point source, the emissions reported in the emissions inventory used in the most recent SIP attainment demonstration model.~~

~~*Modeled Parishes*—the parishes in which emissions were modeled as part of the most recent SIP attainment demonstration. These parishes include Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Charles, St. James, St. Helena, St. John the Baptist, West Baton Rouge, and West Feliciana.~~

~~*Netting*—use of an ERC created at an existing facility to compensate for emission increases associated with a proposed modification at the same facility and to, thus, avoid the requirements of new source review. ERCs used for netting are always internal to the source seeking credit.~~

~~*Nonpermitted Emissions*—those emissions of an air pollutant into open air from nonpermitted emission sources that are not required to have air pollution permits. Nonpermitted emissions may include emissions from mobile sources, exempt equipment, and "grandfathered" sources that were never required to be permitted under the state's new source review rule.~~

~~*Offset*—use of an ERC obtained from an existing source or emissions unit to compensate for the increase in emissions from a new or modified source or emissions unit in a nonattainment area in order to ensure that reasonable further progress is maintained. ERCs used for offsetting may be either internal or external to the source seeking credit but must meet the requirements specified in Section 182 of the 1990 Clean Air Act Amendments.~~

Permanent—a reduction shall be guaranteed through an enforceable permit limitation confirming the amount and duration of the decrease or other enforceable mechanism including, but not limited to, permanently dismantling the emissions unit or surrendering the permit. The department may consider an emission reduction whose quantity varies with time to be permanent by converting it to an annual equivalent emission reduction. Only permanent reductions in emissions can qualify for credit.

Quantifiable—in reference to emission reductions, the amount, rate, and characteristics of the emission reduction can be estimated through a reliable method. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, process parameters, production inputs, modeling, or other reasonable measurement practices. The same method of calculating emissions should generally be used to quantify emission levels both before and after the reduction.

~~*Reasonable Further Progress*—annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of a SIP and regular reductions thereafter) that are sufficient in the judgment of the U.S. EPA to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the SIP for such area.~~

~~*Registered Mobile Source*—any vehicle registered and insured by the owner (without change of ownership) at an address within the nonattainment area continuously for at least 12 months prior to the date the vehicle is purchased.~~

~~*Scrapping*—the process by which a motor vehicle is permanently removed from service.~~

Shutdown—the permanent cessation ~~or permanent curtailment~~ of operations or emissions. The date of the emission reduction created by the shutdown is the date of the last actual emissions from the source.

Shutdown Credits—credits resulting from the shutdown of a source.

~~*Stack or Chimney*—a flue, pipe, tube, conduit, channel or opening designed and constructed for the purpose of emitting air contaminants into the outdoor air.~~

~~*Stationary Point Source*—any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act.~~

~~*Surplus Emission Reductions*—emission reductions that are voluntarily created for an emissions unit and have not been required by any local, state, or federally enforceable law, regulation, order, or requirement~~

and are in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards at the time a permit is issued that relies upon the reductions as offsets.

Transfer—the conveyance of an ERC from one entity to another. All "banking" transactions shall be recorded in the ERC banking register/database and shown as debits and credits for the appropriate entity(ies).

~~*Unpermitted Sources*—those sources which emit air pollutants into the ambient air and which are not required to have air permits. Unpermitted sources may include, but are not limited to, mobile sources, area sources, and small sources not required to obtain air permits.~~

~~*Vehicle Scrappage Program*—a program in which old vehicles are scrapped in exchange for MERCs.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 27:

§607. Stationary Point Source Emission Reductions

A. Pollutants

1. Reductions in the following types of air emissions are eligible for banking ~~pursuant to~~ in accordance with this rule these regulations:

- a. volatile organic compounds (VOCs); and
- b. nitrogen oxides (NO_x).

2. To the extent possible, the applicant may choose to shall ~~speciate the pollutants~~ VOC according to individual compounds ~~upon application when applying to bank the VOC ERCs.~~

~~B. Eligible Sources. Sources that may create and bank emission reductions include, but are not limited to, the following permitted and unpermitted source types, regardless of the size of the source or the level of emissions:~~

- ~~1. stationary sources, including point sources, fugitive emission sources, and off-shore sources;~~
- ~~2. mobile sources, including on-road and off-road sources and marine vessels; and~~
- ~~3. area and indirect sources, including nonpoint sources and agricultural sources.~~

~~CB.~~ Acceptable Methods of Creation. Methods of reducing emissions to receive credit under ~~this rule~~ these regulations include, but are not limited to, the following:

1. ~~enforceable~~ installation of add-on control equipment (an actual emission reduction resulting from the installation of a level of control greater than that which is required by regulation, permit, or SIP provision if the applicant accepts a permit provision specifying a lower level of emissions);
2. ~~enforceable~~ change in process(es);
3. ~~enforceable~~ change in process inputs, formulations, products or product mix, or raw materials (an actual emission reduction resulting from more effective operation and maintenance of abatement and process equipment if the applicant accepts a permit provision specifying a lower level of emission);
4. ~~enforceable~~ reduction in actual emission rate(s);
5. ~~enforceable~~ permanent shutdown of emitting units or facilities ~~(an actual emission reduction resulting from a permanent shutdown of equipment after January 1, 1990, and which causes a loss of capability to produce emissions that were reported in the 1990 or later emissions inventory);~~
6. ~~enforceable~~ production curtailment(s);
7. ~~enforceable~~ reductions in operating hours; and
8. other ~~enforceable~~ methods that might be applicable to eligible source types; ~~and~~
9. ~~enforceable reduction in emissions from area and mobile source types.~~

~~D. Timing of the Emission Reduction. In order to be eligible for banking, emission reductions must occur after December 31, 1989. Creditable emission reductions made prior to December 31, 1989, are not eligible for banking and can only be used for netting.~~

~~E. Geographic Areas. Emissions are banked by geographic areas, usually individual parishes. Separate accounts shall be maintained (either by parish or by EPA designated geographic area) for ozone nonattainment areas and ozone attainment areas. Each area, shall maintain separate accounts for NO_x and for VOCs.~~

FC. Criteria for ERC Approval. ~~1.~~ Emission reductions shall be recognized as ERCs only after the approval of the department has been obtained. The department shall ~~certify~~ approve emission reductions as ERCs that are determined to be surplus, permanent, quantifiable, and enforceable, as defined in LAC 33.III.605.:

- a. ~~surplus;~~
- b. ~~permanent;~~
- c. ~~quantifiable; and~~
- d. ~~enforceable.~~

~~2. Removal of Emission Reduction Credits either for use by a facility or to meet the 15 percent VOC RFP Plan (Section 182(b)(1)(A) of the CAAA) will be done in accordance with LAC 33:III.621.~~

GD. Procedures for Calculating the Emission Reduction. The following procedures shall be used in calculating the quantity of creditable air emission reductions:

1. define the baseline period. The applicant shall first determine the ~~two-year~~ baseline period, as defined in LAC 33:III.605, over which the emission reductions are to be calculated;

2. quantify baseline emissions. The baseline emissions shall be determined by first calculating ~~calculated by determining~~ the actual emissions during ~~each year~~ of the baseline period. Unless the department determines the baseline period to be one calendar year, the actual emissions for each year of the baseline period shall be averaged as follows: ~~to determine the average baseline emission level;~~

a. if the source is located in a nonattainment area, the department must compare the current total point-source emissions inventory for the modeled parishes to the adjusted total point-source emissions inventory, as defined in LAC 33:III.605, used in the most recent SIP attainment demonstration model.

i. If the current total point-source inventory for the modeled parishes exceeds that used in the most recent SIP attainment demonstration model, baseline emissions may not exceed the quantity of emissions attributed to the point source(s) in question in that model. In this case, baseline emissions shall be the lower of actual, allowable, or modeled emissions, as defined in LAC 33:III.605.

ii. If the current total point-source inventory for the modeled parishes does not exceed that used in the most recent SIP attainment demonstration model, baseline emissions shall be the lower of actual or allowable emissions as defined in LAC 33:III.605.

b. for sources located in attainment areas identified in LAC 33:III.603, baseline emissions shall be the lower of actual or allowable emissions as defined in LAC 33:III.605;

3. calculate allowable future (potential) emissions. The applicant shall calculate the allowable future emissions for the source. The allowable emissions shall be based on the maximum emissions capacity of the source except that physical and operational limitations, including air pollution control equipment, restrictions on hours of operation or the type of material combusted, stored, or processed, or other emission restrictions that will be included in a federally enforceable air permit or applicable rules and regulations ~~may~~ shall be considered in calculating the allowable future emissions; ~~and~~

4. ~~calculate the emission reduction credit. The ERC shall be calculated~~ calculate the difference in baseline emissions and future allowable emissions by subtracting the allowable future emissions from the baseline emission level; and

5. adjust for new emission reduction requirements and netting in accordance with LAC 33.III.621.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 27:

§611. Mobile Sources Emission Reductions—Reserved

Repealed.

A. ~~Pollutants. Reductions in the following types of air emissions are eligible for banking pursuant to this rule:~~

1. ~~volatile organic compounds (VOCs); and~~
2. ~~nitrogen oxides (NO_x).~~

B. ~~Eligible Sources. To qualify as emission reduction credits, mobile source emission reductions must meet the same criteria as stationary source emission reductions. The emission reductions from mobile sources must be real, quantifiable, enforceable, surplus, and permanent. Eligible credit-generating vehicles must have been registered and insured by the owner (without change of ownership) at an address within the nonattainment area continuously for at least the previous 12 months prior to the date the vehicle is purchased by the program to be eligible for credit. Eligible vehicles are required to be operable (capable of being used or operated) and driven to the designated intake site by the owner or his/her legal representative (or in the case of corporate-owned vehicles, a certified agent), on a day pre-arranged by the department. In addition, eligible vehicles must undergo a physical inspection, in accordance with Subsection D of this Section, designed to ensure that major body components have not been removed and that the vehicle could be readily used for normal transportation purposes. The site may be owned or leased by a certified automobile crusher who is licensed and certified by the Used Motor Vehicle and Parts Commission. Vehicle model years 1981 and pre-1982, light-duty gas vehicles (LDGVs), and light-duty gas trucks (LDGTs) up to 10,000 pounds gross vehicle weight rating (GVWR) will be considered for mobile emission reduction credits (MERCs).~~

C. ~~Calculating Credits~~

1. ~~Mobile emission reduction credits (MERCs) for VOCs and NO_x shall be issued each year according to the following:~~

a. ~~the formula below includes emission factors estimated by the department, using the latest version of EPA's mobile source emissions model (MOBILE):~~

$$MERC = \frac{[(SCRAP - REPLACE) \times MILESC \times 0.000001102]}{DF}$$

~~where:~~

~~MERC = mobile emission reduction credit (pounds per year of pollutant);~~

~~SCRAP = emission rate of scrapped vehicle in grams per mile, based on the model year of the scrapped vehicle;~~

~~REPLACE = average in-use vehicle emission rate in grams per mile for year in which vehicle is scrapped;~~

~~MILESC = annual mileage corresponding to model year of scrapped vehicle;~~

~~0.000001102 = conversion factor (grams to tons);~~

~~DF = discount factor, equal to 1.2; or~~

b. ~~mobile emission test results certificate or other state-certified/EPA-approved program.~~

2. ~~MERC calculations for all model years will be provided, annually, by the department for the method described in Subsection C.1 of this Section. MERCs shall be valid for a period of three years and shall not be traded.~~

D. ~~Vehicle Visual Inspection. In order to be eligible for MERCs, each vehicle to be scrapped shall be subjected to a visual inspection prior to scrapping. Inspections shall be conducted by a licensed automobile crusher and information recorded on a form designed by and submitted to the Office of Environmental Services, Permits Division. The physical presence of the following elements shall be included in the inspection and shall be required for approval:~~

- ~~1. exhaust system;~~
- ~~2. bumpers;~~
- ~~3. doors;~~
- ~~4. fenders;~~
- ~~5. side and quarter panels;~~
- ~~6. hood and trunk lid;~~
- ~~7. windshields and windows;~~
- ~~8. seats;~~

9. ~~instrumentation and gauges; and~~
10. ~~date of safety inspection sticker.~~

E. ~~Automobile Scrappage. All retired vehicles must be scrapped by a certified automobile crusher who is licensed and certified by the Used Motor Vehicle and Parts Commission. Recycling of vehicle parts must be done by a recycler/dismantler who is licensed by the Used Motor Vehicle and Parts Commission. Solid, liquid, and gaseous waste generated by vehicle scrappage must be disposed of or recycled in accordance with applicable federal, state, and local laws. At a minimum, scrapping shall entail the permanent destruction or recycling of the following vehicle components:~~

1. ~~fuel metering system:~~
 - a. ~~carburetor and internal parts (or fuel injection system);~~
 - b. ~~air/fuel ratio feedback and control system; and~~
 - c. ~~cold start enrichment system;~~
2. ~~air induction system:~~
 - a. ~~controlled hot air intake system;~~
 - b. ~~intake manifold;~~
 - c. ~~heat riser valve and assembly; and~~
 - d. ~~turbocharger systems;~~
3. ~~ignition system:~~
 - a. ~~distributor and internal parts;~~
 - b. ~~spark advance/retard system;~~
 - c. ~~spark plugs;~~
 - d. ~~ignition coil and/or control module; and~~
 - e. ~~ignition wires;~~
4. ~~evaporative control systems:~~
 - a. ~~vapor storage canister;~~
 - b. ~~vapor liquid separator; and~~
 - c. ~~fuel tank and filler cap;~~
5. ~~positive crankcase ventilation (PCV) system:~~
 - a. ~~PCV; and~~
 - b. ~~oil filler cap;~~
6. ~~exhaust gas recirculation (EGR) system:~~
 - a. ~~EGR valve body, and carburetor spacer if applicable; and~~
 - b. ~~EGR rate feedback and control system;~~

7. ~~air injection system:~~
 - a. ~~air pump;~~
 - b. ~~valves affecting distribution of flow; and~~
 - c. ~~distribution manifold;~~
8. ~~catalyst or thermal reactor system:~~
 - a. ~~catalytic converter and constricted fuel filler neck;~~
 - b. ~~thermal reactor;~~
 - c. ~~exhaust manifold; and~~
 - d. ~~exhaust portliner and/or double walled exhaust pipe;~~
9. ~~engine:~~
 - a. ~~cylinder block;~~
 - b. ~~pistons;~~
 - c. ~~connecting rods;~~
 - d. ~~crankshaft;~~
 - e. ~~valve train; and~~
 - f. ~~cylinder head;~~
10. ~~transmission:~~
 - a. ~~all components housed within the transaxle;~~
 - b. ~~torque converter;~~
 - c. ~~clutch related components, including flywheel, pressure plate, friction disc, and throw out bearing; and~~
 - d. ~~all components housed within the transmission case;~~
11. ~~miscellaneous items used in systems and components listed in Subsection E.1-10 of this Section:~~
 - a. ~~hoses, clamps, fittings, tubing, sealing gaskets or devices, and mounting hardware;~~
 - b. ~~pulleys, belts, and idlers;~~
 - c. ~~vacuum , temperature , and time sensitive valves and switches; and~~
 - d. ~~electronic controls; and~~
12. ~~vehicle frame.~~

F. ~~Recordkeeping Requirements. The following information shall be recorded on a form prepared by the participating automobile crusher and submitted to the Office of Environmental Services, Permits Division in duplicate:~~

1. ~~name, address, license number, and telephone number of the automobile crusher, and name of person(s) conducting vehicle visual inspection;~~

2. ~~vehicle make, vehicle model, vehicle model year, vehicle license plate number, vehicle identification number, vehicle mileage, checklist of vehicle components scrapped, and date of scrapping;~~

3. ~~scrapped vehicle owner's name, address, and telephone number, and vehicle owner's insurance company and policy number;~~

4. ~~copy of Louisiana certificate of title for each scrapped vehicle;~~

5. ~~copy of proof of insurance for each scrapped vehicle; and~~

6. ~~a duplicate copy of the permit to dismantle vehicle and the notice of acquisition.~~

G. ~~Compliance Auditing and Enforcement. The department may audit any files and/or records created to comply with recordkeeping requirements. The department shall reserve the right to inspect facilities, including automobile crushers, for compliance with the requirements specified in this rule during regular business hours, Monday through Friday. Department inspectors shall be afforded immediate access to scrapping/dismantling facilities on request. LDEQ will notify the Louisiana Used Motor Vehicle and Parts Commission of any inspections of automobile crushers. Violation of any provisions of this rule, including falsification of information in reports, shall be grounds for the department to disallow or void any MERCs resulting from or associated with the violation and shall be subject to the penalties specified in R.S. 30:2025.~~

H. ~~Geographic Areas. Each bank is limited to a designated ozone nonattainment area, and separate accounts shall be maintained for NO_x and VOCs. Ozone nonattainment areas designated as marginal and above may participate.~~

I. ~~Participation in Mobile Source Emission Reductions Program~~

1. ~~Point source Facilities Obtaining MERCs. Any stationary point source facility in ozone nonattainment areas designated marginal and above may request the purchase of MERCs. The department will develop and maintain a directory of automobile year models/types available and the owners wishing to scrap their vehicles. The facility wishing to purchase MERCs will contact the department and indicate the amount of VOC and/or NO_x emission reduction credits they are seeking. The department will release to that facility the names and telephone numbers of owners sufficient to meet all or part of the desired number of emission reduction credits. It will be the responsibility of the facility to negotiate a fair market value, a minimum of \$450, with the owner of the vehicle. A written statement of that negotiation shall be provided to the Office of Environmental Services, Permits Division signed by both the facility agent and the owner(s) of the vehicle(s) to be scrapped. A check from the facility to the vehicle owner will be submitted with the written statement of negotiation to the department. Upon receipt of the written statement of~~

~~negotiation and the facility's check to the vehicle owner, the department will arrange for a licensed and certified automobile crusher to accept the designated vehicles for destruction. A department representative will witness the destruction of the vehicle(s) and will release the facility's check to the vehicle owner. The purchased MERCs will be transferred to the facility's ERC bank balance. In the event that vehicle scrappage does not take place after the written statement of negotiation and the check are forwarded to the department, the department will return to the facility the facility's check upon demand.~~

~~2.——Private Entities. (Any private entity wishing to participate in the mobile source emission reduction program without benefit of a list of owners wishing to scrap their vehicles.) It will be the responsibility of the private entity to negotiate a fair market value, a minimum of \$450, with the owner of the vehicle. A written statement of that negotiation shall be provided to the department signed by both the private entity agent and the owner(s) of the vehicle(s) to be scrapped. A check from the private entity to the vehicle owner will be submitted with the written statement of negotiation to the Office of Environmental Services, Permits Division. Upon receipt of the written statement of negotiation and the private entity's check to the vehicle owner, the department will arrange for a licensed and certified automobile crusher to accept the designated vehicles for destruction. A department representative will witness the destruction of the vehicle(s) and will release the private entity's check to the vehicle owner. In the event that vehicle scrappage does not take place after the written statement of negotiation and the check are forwarded to the department, the department will return to the private entity the private entity's check upon demand.~~

~~J.——Uses of MERCs. Credit for the emission reductions are applicable for only three years. MERCs can be used as an alternative method of compliance with VOC and NO_x regulations.~~

~~K.——Application and Processing Fees. All fees shall be assessed in accordance with the provisions of LAC 33:III.Chapter 2.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:881 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2448 (November 2000), repealed LR 27:

§613. ERC Bank Balance Sheet Recordkeeping and Reporting Requirements

~~A.——ERC Bank Balance Sheet. For each applicable pollutant (VOC and NO_x), each owner or operator shall maintain an ERC Bank Balance Sheet which shall include the minimum information of company name, physical location, pollutant, date of latest transaction, permit numbers affected, date of ERC~~

~~transaction, date of emissions increase/decrease, ERCs deposited (TPY), ERCs relied upon for netting (TPY)~~
~~ERCs used for offsets (TPY), ERCs available for netting (TPY) and ERCs available for offsets (TPY).~~

A. Recordkeeping Requirements. All records shall be maintained for the life of the ERC and shall be available, upon request, for inspection by the department.

1. For each applicable pollutant (VOC and NO_x), each owner or operator shall maintain ERC records of the following:

- a. a complete description of all projects that generated or required use of ERCs;
- b. ERC deposits applied for, but not yet approved;
- c. approved ERC deposits;
- d. ERCs used as offsets;
- e. ERCs that have expired or were sold to another source;
- f. the date of each transaction;
- g. the current ERC balance; and
- h. adjustments to the ERC balance for new emission reduction requirements and

netting in accordance with LAC 33.III.621.B. Amounts should be specified in tons per year.

2. For each emission reduction that will be part of an ERC bank application or permit application for construction or modification that requires offsets, the owner or operator shall maintain records of the following:

- a. the year(s) determined to be the baseline period;
 - b. actual emissions (TPY) before the start-up of the project as evaluated over the
- baseline period;
- c. the date of the actual emissions decrease;
 - d. allowable emissions after the project (TPY);
 - e. the emission change, emissions (TPY) attributed to the affected emissions
- unit(s) in the most recent SIP attainment demonstration model; and
- f. the creditability of the project. Creditability of projects shall be determined by

reviewing all applicable federally enforceable regulations promulgated before and after the emissions reduction.

3. For each emission increase that will require use of ERCs, the owner or operator shall maintain records of the following:

- a. the year(s) determined to be the baseline period;
- b. actual emissions (TPY) before the start-up of the project as evaluated over the

baseline period;

- c. the date of the actual emissions increase;
- d. allowable emissions after the project (TPY);
- e. the emission change; and
- f. the net contemporaneous increase or decrease in emissions at the facility.

~~B.——Netting and Offsets. In order to keep track of all transactions and the ERC balances and to prevent an ERC from being used for both netting and offsets, the following procedures shall be followed:~~

- ~~1.——each ERC that is created is assigned an item number;~~
- ~~2.——each transaction is shown on a separate line under the appropriate item number;~~
- ~~3.——ERCs that are relied upon for netting are deducted from the balance available for offsets but not from the balance available for netting (since all emission increases and decreases are included in the contemporaneous period); and~~
- ~~4.——ERCs that are used for internal or external offsets are deducted from both balances.~~

~~C.——Recordkeeping Requirements. Each owner or operator shall maintain records on all ERCs deposited in the ERC banking database. This information shall be available, upon request, for inspection by the administrative authority. The records shall be maintained for the life of the ERC and shall include the minimum information: permit number, date permit issued, date of start-up of the increase/decrease, emissions (actual) before the start-up (TPY), emissions (allowable) after the project (TPY), emission change for the project, creditable increases/decreases (TPY), brief description of project, and creditability of project. Creditability of projects shall be defined by all applicable regulations (RACT, NSPS, etc.), emissions before the project (baseline period, hours/year average, percentage of capacity, fuel usage), and emissions after the project (lower of potential or allowable emissions).~~

~~D.——Schedule. All applications for banking ERCs in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge where the emission reductions occurred before August 20, 1994, must have been submitted prior to February 20, 1995. First-time applications for banking ERCs for attainment parishes may be submitted at any time. If a parish is redesignated as ozone nonattainment by the EPA, applications for banking ERCs for those parishes must be submitted within six months after the effective date of the EPA designation. All applications for banking ERCs where the emission reductions occurred after the date this banking rule was adopted for an area shall be submitted by March 1 following the year in which the reduction occurred. The balances (i.e., the balance available for netting and the balance available for offsets) from the ERC bank balance sheets of Subsection A of this Section shall be submitted to the department by March 1 of each year together with the certification specified in Subsection E of this Section. All submittals required by this Subsection must be submitted to the Office of Environmental~~

~~Services, Permits Division. All emission reductions must meet the timing restrictions set forth in LAC 33:III.607.D in order to be eligible for banking as ERCs.~~

B. Reporting Requirements

1. All emission reduction applications must meet the timing restrictions set forth in LAC 33:III.615.A and B in order to be eligible for banking as ERCs.

2. A summary report of all records required by Subsection A of this Section shall be submitted to the department by March 31 of each year. This submittal shall be certified, as specified in Subsection C of this Section, and mailed or hand-delivered to the Office of Environmental Services, Permits Division. This form is being provided to facilitate the proper submittal of information required by these provisions. The form is available at the department's website. If a reporting facility chooses not to use this form, the facility's submittal must meet the requirements of this Subsection. Creditability of each emission reduction project should be addressed in the cover letter.

EC. Certification. A certifying statement is to be signed by the owner(s) or operator(s) responsible official as defined in LAC 33:III.502 and shall accompany each ERC bank balance annual report that is submitted to attest that the information contained in the balance is true and accurate to the best knowledge of the certifying official. The certification shall include the full name, title, signature of the certifying official, and the date of signature, and telephone number of the certifying official.

~~F. Inclusion of ERC Bank in the Emissions Inventory. The administrative authority shall be responsible for including the banked ERCs in the current emissions inventory so that the credits are considered to be "in the air" for air quality planning purposes. Any failure by the regulatory agency to fulfill this responsibility shall not affect the validity of the ERCs in any manner.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 26:486 (March 2000), LR 26:2449 (November 2000), LR 27:

§615. Schedule for Submitting Applications

A. All ~~bank balance sheets~~ applications for banking emission reductions ~~where the emission reductions occurred after adoption of the final rule~~ shall be submitted by March 31 following the year in which the reductions occurred. ~~Thereafter, the bank balance and the applicant's certification should be submitted annually on March 1.~~ ERC applications can be submitted in the form of an ERC bank application

or as part of a permit application for construction or modification. Failure to apply for ERCs by March 31 will invalidate the emission reductions as offsets.

B. ~~All applications for banking ERCs in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge where the emission reductions occurred before August 20, 1994, must have been submitted prior to February 20, 1995.~~ First-time applications for banking ERCs for attainment parishes identified in LAC 33:III.603 may be submitted at any time. If a parish is redesignated as ozone nonattainment by the EPA, application for banking ERCs for those parishes must be submitted within six months after the effective date of the EPA designation. ~~Once a banking application has been filed, the bank balance and the applicant's certification should be submitted annually on March 1.~~

C. ~~Owner(s) or operator(s) of major sources in nonattainment areas with VOC or NO_x emission reductions not identified through the process described in Subsection B of this Section will be confiscated. A notification of confiscation will be sent by the department at such time that a permit modification or renewal is submitted using "unbanked" VOC or NO_x emission reductions described in Subsection B of this Section as offsets or for netting purposes.~~

DC. ~~Bank balance sheets~~ Applications for banking emission reductions ~~which that~~ that are to be made as part of a project ~~which that~~ includes an increase of in emissions ~~and~~ for which the reduction will serve to ~~net out or~~ offset the increase may be submitted as part of the permit application for the proposed increase. Such reductions will be reviewed for applicability as ~~an~~ ERCs concurrently with the review of the permit application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:878 (August 1994), amended LR 21:681 (July 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1623 (September 1999), LR 26:486 (March 2000), LR 27:

§617. Review and Approval of ERCs ~~Bank Balance Sheets~~

A. ~~Determination of a Complete Application.~~ ~~An ERC bank balance sheet shall be deemed complete when the department has determined that sufficient information is available to evaluate the ERC bank balance sheet. The department shall determine whether an ERC application is complete not later than 30 calendar days following receipt of the application, or after a longer time period agreed upon in writing by both the owner(s) or operator(s) and the department. Upon determination that the application is complete, the department shall notify the owner(s) or operator(s) in writing.~~

~~B. Submittal of Additional Information. If the department determines that the bank balance sheet is not complete, the owner(s) or operator(s) shall be notified in writing of the decision, specifying the additional information that is required. The owner(s) or operator(s) shall have 90 days to submit the requested information. Upon receipt of all requested information, the department shall have 30 days to determine whether the application is complete. If no data is submitted or the application is still incomplete, the department may cancel the ERC bank balance sheet with written notification to the owner(s) or operator(s). Upon determination that the application is complete, the department shall notify the owner(s) or operator(s) in writing.~~

A. The department's review and approval of an application for ERCs generally shall be conducted when a request is submitted to use the reductions as offsets. The review shall be conducted in accordance with LAC 33.III.607.

~~CB. Preliminary Decision on the Approval or Disapproval of the Bank Balance Sheet to Approve the ERC. Upon determining that a bank balance sheet is complete, the department shall have 60 days to perform an initial assessment of the bank balance sheet and render a preliminary decision as to whether to approve or to disapprove the ERC. Upon completion of this initial assessment making a preliminary decision to approve any ERC, the department shall provide written notice of such preliminary decision to the owner(s) or operator(s) and the public public notice of its decision. The public notice shall include the name and address of the applicant; the proposed quantity and type of emission reductions to be approved or disapproved; an explanation of the department's initial assessment; the opportunity and time periods to submit written public comments concerning the application; and the name and address of the person to whom public comments and requests for public hearings should be sent. A period of 30 days after the date of publication will be allowed for owner or operator and public comment. The notice of preliminary approval may be incorporated with a notice of preliminary approval of an air permit for which the ERC will be used as offsets. If the notice of preliminary approval is not associated with an air permit, the~~ department's preliminary decision relates only to the banking of the emission reductions and not to the use of the ERCs.

~~DC. Issuance of ERC Certificate. Upon conclusion of the 30 day owner(s)' or operator(s)' comment period provided in Subsection B of this Section, the department shall have 30 days to render a decision as to whether the department approves, conditionally approves, or disapproves the application. This decision shall be promptly delivered in writing by registered mail to the owner(s) or operator(s). If the department decides to approve the ERC bank balance sheet application, the department shall issue an ERC certificate to the owner(s) or operator(s). A copy of the ERC certificate shall be retained by the department, and the original shall be delivered to the owner(s) or operator(s). Delivery by the department of the ERC~~

~~certificate to owner(s) or operator(s) shall be accomplished by registered mail.~~ The issued ERC certificate shall be recorded in the banking ~~register/database~~.

~~ED.~~ Appeals. The owner(s) or operator(s) may appeal the department's decision following provisions specified in R.S. 30:2024.

~~F. Cancellation of ERC Bank Balance Sheet. Withdrawal of a bank balance sheet by an owner or operator shall result in the cancellation of the bank balance sheet. If an owner or operator resubmits the application, the application shall be treated as a new application, and the review and approval process will start over as if the applicant had submitted the bank balance sheet for the first time.~~

~~G. Governing Rules. ERC bank balance sheets shall be reviewed in accord with federal and state rules in effect at the time of the submittal of the ERC bank balance sheet.~~

~~HE.~~ Request for Recalculation of ERCs. Anytime after the original ERC application is submitted, the applicant may request the recalculation of the ERCs for the purpose of using alternative baseline emissions, an alternative baseline period, or availability of more accurate emissions data (i.e., performance test data, etc.). The review and approval of this recalculation request shall follow the same schedule as set forth in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:878 (August 1994), amended by Office of Environmental Assessment, Environmental Planning Division, LR 27:

§619. ~~Registration of Emission Reduction Credit Certificates~~ Bank

A. ~~Banking Register/Database.~~ The department shall maintain a banking ~~register/database~~ that shall consist of a record of all information concerning ~~titles, interest, and other matters such as liens, encumbrances, changes of records,~~ deposits, withdrawals, and transactions, as well as pertinent date(s) concerning such information. All data in the banking ~~register/database~~ shall be available to the public upon request. ~~It is the goal of the department to establish a computerized database which will allow the public to ascertain the amount of reductions which are registered or banked in each designated ozone nonattainment area. In lieu of a computerized database, a paper copy of the amount of reductions that are registered or banked will be available at the department.~~

B. ERC Certificates. Certificates ~~will~~ shall be issued ~~at the point of trade for approved ERCs.~~ A record of each ERC certificate issued shall be retained by the department. Each ERC certificate shall ~~contain,~~ at minimum:

- ~~1. be numbered consecutively;~~

21. bear the date of issuance;
32. be signed by the ~~administrative authority~~ department;
4. ~~bear the seal of the state~~;
53. include the owner(s)' name(s), and address(es), ~~and phone number(s)~~;
64. state the ~~address~~ name of the facility where the emission reduction occurred;
75. indicate the method of ERC creation;
86. show the quantity of the ERC and type of pollutant; and
97. show when the emission reduction occurred.

C. Multiple ERC Certificates and Multiple Ownership. Single or multiple ERC certificates may be issued for a particular emission reduction project. At the owner(s)' or operator(s)' request, multiple ERC certificates shall be issued for each owner's proportional share.

~~D. Duplicate Copy of the ERC Certificate. The department may reissue a lost, mutilated, or destroyed ERC certificate after the ERC certificate title bearer vouches that the original has been lost, mutilated, or destroyed. The word Duplicate, will appear on the reissued certificate.~~

~~E. Inclusion of ERC Bank in the Emissions Inventory. The department shall be responsible for including the banked ERCs in the current emissions inventory so that the credits are considered to be "in the air" for air quality planning purposes. Any failure by the department to fulfill this responsibility shall not affect the validity of the ERCs in any manner.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:879 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2449 (November 2000), LR 27:

§621. Protection of Banked Life and Adjustment of Approved ERCs

A. ~~Only ERCs used as offsets are valid~~ are valid for use as offsets for 10 years from the date of their actual emission reduction to the atmosphere, except as specified in Subsection B of this Section. ~~ERCs can also be used for netting, but only during the contemporaneous period as specified in LAC 33:III.504. An~~ ERC is considered to be used upon issuance of a permit that relies upon the ERC as offsets.

B. ERCs may be used by the ERC certificate owner(s) or operator(s) or by any entity to whom the ERC certificate has been transferred, except that the department may reduce the quantity of ERCs under the following circumstances:

1. Adjustments for New Emission Reduction Requirements. If a new or revised federally enforceable regulation is adopted that will require, or would have required, all or a portion of the emission

reductions that comprise the ERC, that portion of the emission reduction required by the new regulation shall not be considered surplus. The quantity of ERCs shall be adjusted accordingly to account for new and revised emission reduction requirements in effect at the time of use of the ERCs. ERCs generated from the permanent shutdown of an emissions unit or facility shall not be adjusted.

2. Adjustments for Netting. Emission reductions used in a netting analysis (i.e., to determine the net emissions increase) as provided in LAC 33:III.504 that prevented the increase from being considered "significant" are not eligible for use as offsets. The quantity of ERCs used for this purpose shall be adjusted accordingly.

~~1. Adjustments for Attainment Planning Purposes. The department will maintain a bank balance (of VOC reductions which have not been designated for either netting or offset purposes) sufficient to demonstrate the commitments made in the reasonable further progress plan which may be a reduction identified to satisfy the 15 percent VOC Reasonable Further Progress Plan or the contingency measures associated with the same plan. The department shall confiscate only those ERCs from the bank that are needed for attainment purposes either as a support to the 15 percent VOC RFP or when a milestone of that plan has been missed. ERCs which have already been used or for which a permit application has been submitted (either for netting or offsetting purposes) shall not be reduced in quantity or confiscated under any circumstance.~~

~~2. Prior notification and comment opportunity. The department shall notify the owner(s) of reduction credits, in writing, its plans to confiscate in order to meet the 15 percent VOC RFP or contingency measures. A 30-day comment period will be allowed for the affected facility(ies) to respond to the department's confiscation or to submit an alternative emissions reduction proposal.~~

~~3. Refunding of Unused ERCs. If all of the ERCs withheld for the reasonable further progress demonstration are not utilized, then the department shall refund the unused ERCs to the generating sites on a pro rata basis. Refunds will be in a direct proportion to a site's individual contribution to the amount of ERCs withheld for reasonable further progress. The period of time that an ERC was held by the department will not count toward the contemporaneous period for netting or the ten-year life for offsetting purposes.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:879 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1623 (September 1999), LR 27:

§623. Withdrawal, Use, and Transfer of Emission Reduction Credits

A. ~~Withdrawal of ERCs.~~ An ERC certificate may be withdrawn in whole or in part. The ERC owner must submit a written request to withdraw and use the ERCs. This request may be submitted in the form of an ERC bank application or as part of a permit application for construction or modification. ~~The administrative authority shall have 30 calendar days to review the request.~~ Upon such request to withdraw ERCs from the bank, the department shall be responsible for recalculating the quantity of available ERCs for that entity and for providing that entity with an adjusted ~~bank balance sheet~~ ERC certificate. In the case of a partial withdrawal, the ~~assistant secretary~~ department shall issue a new certificate reflecting the available credits remaining.

B. ~~Use of ERCs.~~ ~~ERCs shall be used in accordance with applicable regulations. ERCs may be used anytime after the issuance of an ERC certificate. After the ERC has been used, the ERC owner shall relinquish title to the ERC, and the banking register shall indicate that the ERC has been used. After an ERC is applied to an air permit or a project or otherwise used, the quantity shall not be changed for any reason. An ERC may be used:~~

- ~~1. to offset increased emissions from new or modified sources in nonattainment or attainment areas in accordance with LAC 33:III.504;~~
- ~~2. for netting under nonattainment new source review or prevention of significant deterioration programs in accordance with LAC 33:III.504 and 509;~~
- ~~3. where allowed, to establish alternative emission limits (which have been approved by both the department and the U.S. EPA); and~~
- ~~4. in another manner deemed appropriate and in accordance with applicable state and federal law.~~

C.B. ~~Transfer of ERCs.~~ An ERC certificate may be transferred in whole or in part. The role of the department in the transfer of an ERC certificate shall be limited to providing information to the public, documenting ERC transfers, and registering ERC certificates. ~~The administrative authority~~ department shall be notified within 30 days of any transfer of ~~the credit~~ an ERC to another party. ~~The old certificate shall be submitted to the assistant secretary who~~ The department shall then issue a new certificate within 30 days indicating the new owner. In the case of a partial transfer, the ~~assistant secretary~~ department shall issue a new certificate to the new owner as well as a revised certificate within 30 days to the current owner reflecting the available credits to each owner. ~~The original ERC certificate shall be canceled.~~ The banking register/database shall indicate the transfer to the new owner (and reduction of credits when a partial transfer takes place) ~~and the invalidation of the original ERC certificate.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:880 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2449 (November 2000), LR 27:

§625. ~~Application and Processing Fees~~ Repealed

~~Fees will be assessed when the application process does not coincide with a permit application, permit modification, required initial reporting or required annual reporting.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:880 (August 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES LOG #: AQ 211**

Person

Preparing

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Return

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Rule Title: Revisions to Regulations on Control
of Emissions Through the Use of
Emission Reduction Credits Banking
(LAC 33:III.Chapter 6)

Date Rule Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no costs or savings to state or local governmental units as a result of this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

First, language requiring that Emission Reduction Credits (ERC) must be "surplus when used" will be added. This revision is required in order to comply with EPA's interpretation of the Clean Air Act and current policy/guidance regarding Nonattainment New Source Review (NNSR) procedures. The regulated community is already required to comply with federal policy so this change will not impose any additional burden on them. This change is required to bring the state into compliance with federal policy. The rule revision will have the effect of nullifying some ERC currently approved and in the bank. The exact amount cannot be determined without a comprehensive review of all banked credits. Informal discussions with industry environmental personnel have indicated that the one ERC (1 ton

per year) has a market value of approximately \$5,000. LDEQ maintains a database of banked credits, but the financial transactions associated with buying and selling ERC are strictly between companies involved.

Second, all references to the ERC bank being a contingency measure for Louisiana's 15% VOC Reasonable Further Progress (RFP) Plan will be removed. The regulated community will benefit because ERCs will no longer be subject to confiscation, and sources will be able to withdraw ERCs in excess of the amount claimed by LDEQ in its 3% contingency measure, 5.7 TPD (see §601.A.3).

Next, the stipulations that mandate emissions reductions be banked as ERCs in order to use them to "net out" in a nonattainment area will be eliminated. The benefit to permittees comes in the form of increased flexibility.

Finally, LDEQ intends to delete the mobile emission reduction credits (MERCs) provisions under LAC 33:III.611. This program was never implemented; hence, there will be no costs or benefits associated with its removal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Signature of Agency Head or Designee

James H. Brent, Ph.D., Assistant Secretary
Typed Name and Title of Agency Head
or Designee

LEGISLATIVE FISCAL OFFICER OR DESIGNEE

Date of Signature

Date of Signature

LFO 7/1/94

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

By this notice, the Department is proposing to revise LAC 33:III.Chapter 6, adopted in August 1994, and amended in December 1998 and September 1999. This revision involves four actions: 1.) language clarifying that Emission Reduction Credits (ERC) must be "surplus when used" will be added; 2.) references to the ERC bank being a contingency measure for Louisiana's 15% VOC Reasonable Further Progress (RFP) Plan will be removed; 3.) stipulations that mandate emissions reductions be banked as ERCs in order to use them to "net out" in a nonattainment area will be eliminated; and 4.) the mobile emission reduction credits (MERCs) provisions under LAC 33:III.611 will be deleted.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Chapter 6, Regulations on Control of Emissions Through the Use of Emission Reduction Credits Banking, was adopted by the Department to meet two primary purposes. First, the rule established the means to enable sources to identify and preserve or acquire emission reductions for use as Nonattainment New Source Review (NNSR) offsets to meet the requirements of the federal Clean Air Act (CAA) at Title I, Part D, Section 110. (See LAC 33:III.601.B.1). Second, the rule, and specifically the emission reduction credits approved and banked under the rule, were provided to serve as a contingency measure requirement under Sections 172(c)(9) and 182(c)(9) of the CAA for the State Implementation Plan (SIP) for the Baton Rouge Area Ozone Nonattainment Area, Reasonable Further Progress for the 1996-1999 Period, and Attainment Demonstration.

Subsequent to its adoption by the State and submittal to EPA for federal approval, EPA granted full and final approval to the rule to meet both purposes described above. (See *Federal Register* 35930, July 2, 1999). In its approval, EPA stated, "The EPA is taking final action to approve the already-banked VOC emission reductions credits (totaling 5.7 tons/day) toward meeting the three percent contingency measure requirement pursuant to sections 172(c)(9) and 182(c)(9) of the Act. The EPA has determined that the point source banking regulations are generally consistent with the Act, EPA policy/guidance and Federal regulations. Therefore, the EPA is taking final action to approve the State's banking regulations as meeting the requirements for SIP approval under part D and section 110 of the Act." Further, EPA stated, "Specifically, the EPA is taking final action to approve the contingency-reserved VOC banked emissions reductions of 5.7 tons/day (achieved through the State's banking regulations), identified in appendix T of the December 22, 1995, submittal, as creditable towards the 3 percent contingency requirements of sections 172(c)(9) and 182(c)(9) of the Act."

Notwithstanding the SIP-approved status of the banking regulations and the emission reduction credits held in the bank, discussions between the Department and EPA over the last year have raised questions regarding whether the rule and its application are consistent with current EPA policy/guidance regarding Nonattainment New Source Review procedures. Specifically, EPA has stated its belief that the rule as promulgated could be interpreted and applied to require that banked emission reduction credits (ERCs) be reduced in quantity at the time of their use to account for any emission reductions that would have been required by any new regulations adopted since the time the credited emission reductions were generated. This interpretation is often summarized as ERC must be “surplus when used.” EPA’s position is based on a statement in the Background section of Chapter 6 that the regulation does not alter new source review requirements or exempt owners or operators from compliance with applicable regulations (LAC 33:III.601.A). Such an interpretation would be consistent with current federal policy. Further, EPA has noted that the agency’s approval of the rule was premised on this belief (see Federal Register 44200, August 18, 1998).

The Department, however, interprets and has applied the rule to prohibit such a reduction in quantity of emission reduction credits. In particular, the rule provides explicit definitions and procedures for calculating the quantity of creditable emission reductions (see §605, Definitions, and §607.G, Procedures for Calculating the Emission Reduction). These definitions and procedures require that credit be given for reductions from a “baseline emission level” of “actual emissions” during the period “preceding the date the emission reduction occurred.” In addition, the rule provides explicitly, at §621, for the “Protection of Banked ERCs” approved by the Department, and preserves ERCs for use by the certificate holder, except under specifically provided circumstances. The only circumstances provided under which the certificate holder may not use the ERCs are those cases in which the credits have been properly confiscated by the Department for use as a contingency measure. Further, §621.B.1 explicitly provides that “ERCs which have already been used or for which a permit application has been submitted shall not be reduced in quantity or confiscated under any circumstance.”

In addition to unambiguous language in the rule that is inconsistent with a practice of reducing ERCs at the time of use, the administrative rulemaking record for Chapter 6 clearly illustrated the Department’s intent that such a practice would not be adopted. Documentation of the rule as proposed, then as repropounded with substantive and technical amendments, and the final rule with technical amendments illustrate this point. The Department initially proposed to adopt a requirement that ERCs be reduced to account for new rules subsequent to their generation, then, in response to comment, repropounded the rule striking out these provisions. In response to comment from EPA that the requirement should be retained, the Department stated “changes were made which are in disagreement with those views submitted by EPA. LDEQ is not familiar with any federal regulation which requires the language that EPA has proposed is mandated.”

Because the use of the VOC bank certificates and Chapter 6 procedures for the issuance of permits subject to offset requirements under NNSR could lead to LDEQ actions that do not conform with EPA’s “surplus when used” policy, the Department is proposing to revise Chapter 6 to adhere to the federal guidelines.

As part of a previous revision to the State Implementation Plan (SIP) required by the Clean Air Act, LDEQ established a contingency plan for the confiscation of certain Emission

Reduction Credits (ERC) in the "bank" as provided in LAC 33:III.Chapter 6 to be implemented in the event the Baton Rouge nonattainment area failed to achieve attainment or demonstrate an appropriate milestone. The EPA approval of the SIP revision was appealed to the United States Court of Appeal for the Fifth Circuit. A Joint Motion to Remand the approval of confiscation of ERCs as a contingency plan back to the EPA for further consideration has been granted by the court.

Any permits previously issued in accordance with state and EPA-approved rules in effect at the time of issuance remain valid. Thus, the Department has no intention to reopen any permits for cause due to changes in applied policies.

The other aspects of the rule revision are as follows. References to the ERC bank being a contingency measure for Louisiana's 15% VOC Reasonable Further Progress (RFP) Plan will be removed. The bank will no longer be LDEQ's contingency measure in the event that compliance with the ozone national ambient air quality standard (NAAQS) is not achieved by the appropriate date. Also, the stipulations that mandate emissions reductions be banked as ERCs in order to use them to "net out" in a nonattainment area will be eliminated. This condition was established to encourage sources to bank all creditable emission reductions as ERCs. Now that the bank will no longer be a contingency measure, there is no need for this additional netting caveat. Finally, LDEQ intends to delete the mobile emission reduction credits (MERCs) provisions under LAC 33:III.611, as the program was never implemented.

C. Compliance with Act II of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

This proposed rule will not result in any increase in the expenditure of funds.

2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

This is not applicable for this proposed rule.

(a) ____ Yes. If yes, attach documentation.

(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 01-02	FY 02-03	FY 03-04
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
<u>EQUIPMENT</u>	-0-	-0-	-0-
<u>TOTAL</u>	-0-	-0-	-0-
<u>MAJOR REPAIR & CONSTR.</u>	-0-	-0-	-0-
<u>POSITIONS(#)</u>			

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

This section is not applicable.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 01-02	FY 02-03	FY 03-04
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
<u>OTHER (Specify)</u>	-0-	-0-	-0-
<u>TOTAL</u>	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No funds are required to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There is no anticipated impact of the proposed action on local governmental units.

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

This is not applicable.

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase (decrease) in revenues can be anticipated from the proposed action?

There is no estimated effect on revenue collections of state or local governmental units from the proposed action.

REVENUE INCREASE/DECREASE	FY 01-02	FY 02-03	FY 03-04
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
<u>LOCAL FUNDS</u>	-0-	-0-	-0-
<u>TOTAL</u>	-0-	-0-	-0-

*Specify the particular fund being impacted.

- B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

There are no estimated effects on revenue collections of state and local governmental units.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

The four aspects of the rule revision will have differing impacts on the regulated community. Each is addressed separately below.

First, language requiring that Emission Reduction Credits (ERC) must be "surplus when used" will be added. This revision is required in order to comply with EPA's interpretation of the Clean Air Act and current policy/guidance regarding NNSR procedures. This submittal seeks to extend the attainment date for the 5-parish Baton Rouge nonattainment area until at least November 2005. In order to effect this

change, an adjustment for new emission reduction requirements will be added to §621.

“Surplus when used” can be summarized as follows. If a new or revised federally enforceable regulation is adopted that will or would have required all or a portion of the emission reductions which comprise an ERC, that portion of the emission reduction covered by the new requirements cannot be considered *surplus* and therefore cannot be used as an ERC. The quantity of ERCs must be adjusted accordingly to account for new and revised emission reduction requirements in effect at the time of submission of the bank balance sheet to withdraw and use the ERCs.

The new interpretation will have the effect of nullifying some ERC currently approved and in the bank. However, the credits would have been invalidated regardless of the Department’s rulemaking effort, as compliance with EPA’s policy/guidance is still required on a federal level. All Part 70 (Title V) permits that rely on ERC as offsets must be sent to EPA Region 6 for their review. EPA will not approve a permit if they determine reductions banked as ERC and relied upon as offsets are no longer surplus. Therefore, the “surplus when used” revisions to Chapter 6 will have no effect on the regulated community.

DEQ has verbally agreed to adopt EPA’s policy/guidance, and by this action, is simply codifying it in Chapter 6 for the benefit of the regulated community and to ensure EPA does not use ERC banking as grounds to disapprove the forthcoming SIP revisions.

The exact amount of ERC that will be invalidated cannot be determined without a comprehensive review of all banked credits. In the future, LDEQ will review banked credits for eligibility as offsets at the time of permitting (see LAC 33:III.504) in accordance with current federal policies and guidelines (regardless of whether an ERC certificate has previously been issued under current Chapter 6 language). Informal discussions with industry environmental personnel have indicated that the one ERC (1 ton per year) has a market value of approximately \$5,000. LDEQ maintains a database of banked credits, but the financial transactions associated with buying and selling ERC are strictly between companies involved.

Second, all references to the ERC bank being a contingency measure for Louisiana’s 15% VOC Reasonable Further Progress (RFP) Plan will be removed. The bank will no longer be LDEQ’s contingency measure in the event that compliance with the ozone national ambient air quality standard (NAAQS) is not achieved by the appropriate date. Accordingly, language specifying the procedures for confiscation of credits for attainment planning purposes (§621.B.1, 2 & 3) will also be deleted. The regulated community will benefit because ERCs will no longer be subject to confiscation, and sources will be able to withdraw ERCs in excess of the amount claimed by LDEQ in its 3% contingency measure, 5.7 TPD (see §601.A.3).

Next, the stipulations that mandate emissions reductions be banked as ERCs in order to use them to “net out” in a nonattainment area will be eliminated. Currently, when a major source proposes to make a modification which triggers a netting analysis, but has ample reductions during the contemporaneous period so that it may

“net out” (i.e., not trigger the LAER and/or offset requirements of LAC 33:III.504), the source must have sufficient ERC in the bank, or bank their contemporaneous reductions concurrently with the permit application. This condition was established to encourage sources to bank all creditable emission reductions as ERCs, as the bank was identified as the contingency measure for Louisiana’s 15% VOC Reduction RFP Plan. Now that the bank will no longer be a contingency measure, there is no need for this additional netting caveat. No underlying federal regulation mandates its necessity. The benefit to the regulated community comes in the form of increased flexibility. Emission reductions must still be banked in order to be used as offsets.

Finally, LDEQ intends to delete the mobile emission reduction credits (MERCs) provisions under LAC 33:III.611. This program was never implemented; hence, there will be no costs or benefits associated with its removal.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

This is not applicable.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There are no estimated impacts on competition and employment in the public and private sectors.